

Applicant : Thomas G. Woolston
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REMARKS

Claims 51-53 were pending prior to amendment. Claim 52 has been cancelled without prejudice. Claims 51 and 53 have been amended to clearly define the claimed subject matter, and new claims 54-65 have been added. The new claims 59-65 are method claims directed to similar features as the amended system claims 51-58. No new matter has been added.

Support for the amended claims and the newly added claims can be found in the specification at least in the following portions. On page 3, lines 14-15, the applicant discloses a network of consignment nodes and posting terminal, which are communication channels. On page 4, lines 22-25, the applicant discloses that a consignment node in a simple form may have a computer and a database among other elements. On page 5, lines 17-21, the applicant discloses a plurality of participants buying and selling collectibles on a consignment node. On page 8, lines 11-15; page 13, line 25 – page 14, line 2; page 16, lines 2-22; and FIG. 1, the applicant discloses a plurality of participant terminals to allow a plurality of buyer and seller participants to communicate with the plurality of consignment nodes. On page 6, line 1 – page 8, line 8; page 17, line 24 – page 18, line 21; and FIG. 1, the applicant discloses consignment nodes receiving data comprising text and photographs of the plurality of items for sale, creating data records and building a database of the data records. On page 8, lines 11-25, the applicant discloses allowing the buyer participants to browse the database of items for sale and purchasing the desired item by submitting an electronic payment. On page 8, line 26 – page 9, line 20 and page 22, line 13 – page 23, line 23, the applicant teaches clearing the electronic payment; transferring the ownership to the buyer participant; locking the data record; and allowing the buyer participant to either ship the item or re-post the item. On page 8, line 19 – page 9, line 2; page 22, line 10-21; and FIG. 12, No. 812, the applicant teaches the transaction processor. On page 2, lines 7-10 and page 29, lines 7-22, the applicant teaches two tier price system.

Claims 51-53 stand rejected under 35 U.S.C. 112, 1st paragraph, as allegedly failing to comply with the written description requirement. Claims 51-53 stand rejected under 35 U.S.C. 112, 2nd paragraph, as allegedly being indefinite for failing to particularly point out and distinctly

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claim the subject matter which applicant regards as the invention. Claims 51-53 also stand rejected under 35 U.S.C. 102(e) as being allegedly anticipated by U.S. Patent No. 5,664,111 to Nahan et al. ("Nahan").

In view of the remarks herein, the applicant respectfully traverses these rejections and requests reconsideration for an expedited notice of allowance.

I. Information Disclosure Statement

The office action objects to the information disclosure statement (IDS) filed May 3, 2004 under 37 C.F.R. 1.98(a) (2-3). A supplemental IDS will be submitted short after this amendment to obviate the contention.

II. The Rejection under 35 U.S.C. 112, 1st paragraph

Claims 51-53 stand rejected under 35 U.S.C. 112, 1st paragraph, as allegedly failing to comply with the written description requirement. Claims 51-53 have been amended without prejudice, and thus obviates the contention.

III. The Rejection under 35 U.S.C. 112, 2nd paragraph

Claims 51-53 stand rejected under 35 U.S.C. 112, 2nd paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 51-53 have been amended without prejudice, and thus obviates the contention.

IV. The Rejection under 35 U.S.C. 102(e)

Claims 51-53 stand rejected under 35 U.S.C. 102(e), as being allegedly anticipated by Nahan. In addition, the office action fails to give patentable weight much of the functional language present in the preamble and the body of the claims citing heavy reliance on "intended use." Claims 51 and 53 have been amended and claim 52 cancelled, which obviate the contention.

Amended Claim 51

Nahan does not suggest or teach each and every limitation of the amended claim 51, and thus fails to anticipate the claim.

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For example, Nahan does not teach a communication channel configured to "electronically present the item for sale using the data directly to an audience of internet participants operating the plurality of participant terminals" as recited in the currently amended claim 51 (emphasis added). In contrast to the present application, Nahan teaches that "a salesperson and customer sit around the table, discuss the customer's preferences, and reviews artwork...Based on the customer's choices, the salesperson is able to build a portfolio of possibilities" (col. 3, lines 30-56). Therefore, Nahan is limited to using a human salesperson who browses the list of items for sale, and thus teaches away from the system of claim 51, which directly presents the item for sale to the customer.

In addition, Nahan also requires the salesperson, not the intended consumer to purchase the item for sale. In particular, Nahan teaches that the "dealer places a buy order on behalf of a client...the system requests that the buying dealer wire transfer funds to pay for the purchased work" (col. 13, lines 47-64). Therefore, Nahan does not allow the customer to directly purchase and pay for the item.

Amended Claim 53

Amended claim 53 depends ultimately from amended claim 51, and thus is patentable over Nahan for at least the same reason as stated with respect to claim 51 above.

In addition, Nahan fails to teach each and every limitation of amended claim 53. The office action has only considered the language, "book entry transaction" and does not provide factual evidence to support the allegation that Nahan teaches each and every limitation of amended claim 53. In addition, the office action alleges that "it is clear that the system is capable of supporting authorization of the transfer of funds by book entry transaction" (page 29, lines 1-8), but fails to provide any factual evidence to support this allegation. Further, Applicant cannot find any teaching in Nahan that suggests an account database that maintains the participant account, allow the audience of internet participants to access the account, and authorize the transfer of funds by book entry transaction as recited in amended claim 53.

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New Claim 54

New claim 54 depends ultimately from amended claim 51, and thus is patentable over Nahan for at least the same reason as stated with respect to amended claim 51 above.

New Claims 55-56

New claims 55-56 depends ultimately from amended claim 51, and thus is patentable over Nahan for at least the same reason as stated with respect to amended claim 51 above.

In addition, Nahan does not teach allowing the seller participants to enter a wholesale price and a retail price for the item for sale as recited in new claim 55. Although, Nahan mentions keeping a record of prices at which individual works are sold at dealer wholesale price, Nahan does not teach allowing the seller participant to enter a wholesale price and a retail price for the item for sale as recited in claim 55.

Further, Nahan does not teach providing the wholesale price to a first class of retail participants and the retail price to a second class of retail participants as recited in new claim 56. The office action asserts that Nahan allegedly teaches dealer-to-dealer transactions and consumer-to-consumer transactions (page 25, line 19 – page 26, line 1). The office action also alleges that Nahan teaches having access to both a “suggested retail price” and a “wholesale” price, and adds that “as is customary, a suggested retail price is the price recommended to be charged to a consumer, while a wholesale price is a different (normally lower) price expected of a dealer” (page 26, lines 2-7). Applicant disagrees. First, Nahan does not explicitly teach that the wholesale price is limited to dealer-to-dealer transactions or that the retail price is provided for the consumer-to-consumer transaction. Thus, the office action relies upon the notion that such pricing is “customary.” Even if this allegation were true arguendo, Nahan still fails to teach each and every limitation of new claims 55-56. If such pricing scheme is “customary,” it would not be obvious to provide the wholesale price to one class of retail customers and the retail price to a second class of retail customers as recited in new claim 56.

New Claim 58

New claim 58 depends ultimately from amended claim 51, and thus is patentable over Nahan for at least the same reason as stated with respect to amended claim 51 above.

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In addition, Nahan does not teach allowing the one or more of the audience of internet participants sending the payment to re-post the item for sale by electronically presenting the item for sale again without shipping the item for sale as recited in new claim 58. In contrast to Applicant's claimed subject matter, Nahan teaches only shipping the item after the electronic payment has been transferred (col. 14, lines 31-49).

New Claims 59-65

New claims 59-65 are directed to similar claimed subject matters as amended claims 51, 53, and new claims 54-58, and thus are patentable over Nahan for at least the same reasons as stated for amended claims 51, 53, and new claims 54-59 above.

Conclusion

It is believed that all of the pending claims have been addressed in this paper. However, failure to address specific rejection, issue, or comment, does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above are not intended to be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

Claims 51-65 are in condition for allowance, and a notice to that effect is respectfully solicited. If the Examiner has any questions regarding this response, the Examiner is invited to telephone the undersigned at (858) 678-5070.

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Respectfully submitted,

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8/15/05

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